



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Louis Feuchtbaum, Esq.
Bienert & Miller
115 Avenida Miramar
San Clemente, CA 92672

MAR 5 2009

RE: MUR 6174 (formerly MUR 5955)
Dr. Jose Valdez

Dear Mr. Feuchtbaum:

On December 5, 2007, the Federal Election Commission notified your client, Dr. Jose Valdez, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time. Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on February 12, 2009, found that there is reason to believe Dr. Jose Valdez knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

10044273143

Louis Feuchtbau, Esq.
MUR 6174
Page 2

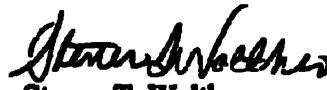
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kathryn Lefebvre, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

10044273144

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Dr. Jose Valdez

MUR 6174

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the Rudy Giuliani Presidential Committee, Inc. ("RGPC") and information obtained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

RGPC's complaint alleges, based on a letter from WellPoint, Inc. ("WellPoint") attached to the complaint, that Dr. Jose Valdez, former Senior Vice President for Health Care for WellPoint, reimbursed \$11,500 in contributions to RGPC made in the names of three WellPoint employees, Michael Ramseier, Steve Melody and Rosario Chavez and spouses, Janie Ramseier and Joan Melody.¹ Information obtained by the Commission in the course of carrying out its supervisory responsibilities indicates that WellPoint became aware that Dr. Valdez reimbursed contributions through an uninvolved employee who informed the company that he had heard that Dr. Valdez solicited certain other employees for political contributions. WellPoint interviewed these other employees, WellPoint Vice Presidents of Health Services, Michael Ramseier and Steve Melody and Senior Network Analyst, Rosario Chavez.

In the interviews, each of the employees stated that they and Valdez had attended the Latino Coalition Small Business Conference in Washington, D.C. on May 1, 2007, on behalf of

¹ Steve Melody's wife's name is Joan, not Desiree as stated in the complaint.

1 WellPoint, a corporate sponsor. Rudy Giuliani was a featured speaker at the conference.

2 Following the conference, there was an unrelated RGPC fundraiser.

3 According to the employees, before arriving in Washington, D.C., Valdez asked
4 Ramseier, Melody and Chavez, all subordinate employees reporting directly or indirectly to him,
5 if they would like to attend a closed meeting with Giuliani and have their pictures taken with
6 him. When they arrived at the RGPC fundraiser, however, Dr. Valdez informed the employees
7 that they were required to contribute \$2,300 in order to attend the event. All three initially
8 refused and protested that they did not want to contribute, but did so after Dr. Valdez said he
9 would personally reimburse them and it was permissible to have their names used to make the
10 contributions. Ramseier told Dr. Valdez that he was uncomfortable with the request, but
11 contributed \$4,600 on behalf of himself and his wife Janie anyway. Steve Melody stated he also
12 had reservations about the arrangement, but also contributed \$4,600 on behalf of himself and his
13 wife Joan. Rosario Chavez, who was not a member of management, said she contributed \$2,300
14 as requested based on the promise of reimbursement.

15 The letter from WellPoint attached to the Complaint and information obtained by the
16 Commission indicate that Ramseier and Melody both were reimbursed by personal checks from
17 Valdez at the fundraiser, delivered by Dr. Pedran Salimpour, reportedly a friend of Valdez.
18 Chavez was reimbursed \$2,300 in cash in an envelope delivered by Kenny Deng, another
19 WellPoint employee.² When interviewed, Deng stated he did not remember giving Chavez the
20 envelope, but said he must have done so and that he didn't know what was in it.

21 Information obtained by the Commission in the course of carrying out its supervisory
22 responsibilities indicates that WellPoint discharged Dr. Valdez, gave "final written warnings" to

² Information obtained by the Commission indicates that Kenny Deng reportedly attempted to contribute, but had a problem with his credit card and therefore did not make a contribution.

10044273147

1 Ramseier and Melody, and a verbal warning to Chavez, as a result of the reimbursement scheme.
2 To ensure corporate funds were not used for the reimbursements, WellPoint searched company
3 records, including expense reports, impact award payments (spot bonuses that Valdez approved),
4 other expense submissions, Valdez's expense reports from 2004 through present, and WellPoint
5 programs that might have reimbursed the contributions and found nothing to suggest corporate
6 funds were used to reimburse political contributions or expenses.

7 According to the Complaint, RGPC immediately commenced an investigation following
8 its receipt of WellPoint's letter. The investigation revealed that Dr. Valdez was an authorized
9 fundraising agent of RGPC and host of the May 1, 2007 RGPC fundraiser in Washington, D.C.
10 According to information obtained by the Commission in the normal course of carrying out its
11 business, as an authorized fundraising agent, Dr. Valdez was required by RGPC to acknowledge
12 in writing that he reviewed materials the campaign provided on campaign finance law, which
13 included a section that made clear that contributions must be made from personal funds. The
14 Complaint states that Valdez collected a total of 14 contributions for the event, two from himself
15 and his wife, the five conduit respondent contributions at issue, and seven others.³ RGPC asserts
16 that it was unaware that Valdez may have violated the Act before it received the WellPoint letter.

17 The Complaint states that RGPC remedied the situation on October 30, 2007 by
18 1) revoking Valdez's authority as fundraiser for RGPC in a letter, 2) refunding the \$4,600 in
19 contributions made by Valdez and his wife, 3) refunding the \$11,500 in contributions at issue to
20 the named donors, and 4) contacting the seven remaining donors that contributed through
21 Valdez, each of whom confirmed to RGPC that their contributions were made freely and not
22 reimbursed by Valdez or any other party. *Id.*

³ Valdez did not collect any other contributions for RGPC besides the 14 for the May 1, 2007 RGPC fundraiser in Washington, D.C.

10044273148

1 In his response to the complaint, Valdez states that \$11,500 was contributed to RGPC in
2 the name of five separate unnamed donors, including Valdez and his wife.⁴ Valdez admits
3 reimbursing the "other donors for their contributions." He states that the contributions were not
4 made with any intent to corruptly influence the candidate nor did he seek any special influence or
5 favors from Giuliani or RGPC. Valdez requests conciliation, stating he is willing to cooperate
6 with the Commission and hopes to resolve this matter expeditiously. He states that the
7 contributions were not made with any intent to corruptly influence the candidate nor did he seek
8 any special influence or favors from Giuliani or RGPC. Although Valdez has acknowledged he
9 violated the Act, he does not state that he acted knowingly and willfully, nor does his response
10 address 1) who exactly he reimbursed, 2) the source of the cash used to reimburse Chavez,
11 3) his knowledge of federal campaign finance law at the time, including his signing of an RGPC
12 fundraiser's statement that he read and understood information the campaign provided on
13 campaign finance laws, 4) the circumstances of the reimbursements, including what he told his
14 subordinates and the delivery of the reimbursements by others, and 5) whether the scheme was
15 confined to Valdez and the conduit respondents.

16 **III. LEGAL ANALYSIS**

17 The Act provides that "no person shall make a contribution in the name of another
18 person." 2 U.S.C. § 441f. The prohibition extends to knowingly helping or assisting any person
19 in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii). Further, the Act
20 limits the amount a person can contribute to a candidate for federal office and the candidate's
21 authorized political committee, to \$2,300 per election. 2 U.S.C. § 441a(a)(1)(A), 11 C.F.R.
22 § 110.1(b)(1).

⁴ This is not consistent with the complaint, which alleges that Dr. Valdez reimbursed \$11,500 contributed to RGPC in the name of five separate donors, not including the \$2,300 each contributed by Valdez and his wife.

1 Based on the available information, it appears that Dr. Valdez reimbursed five conduits
2 for \$11,500 in contributions to RGPC in violation of 2 U.S.C. § 441f. In addition, since Dr.
3 Valdez himself contributed \$2,300 to RGPC at the May 1, 2007 fundraiser, when that
4 contribution is aggregated with the amounts he contributed in the names of others, he exceeded
5 the Act's limit by as much as \$11,500, in violation of 2 U.S.C. § 441a(a)(1)(A).

6 Moreover, it appears that Dr. Valdez' conduct may have been knowing and willful. The
7 knowing and willful standard requires knowledge that one is violating the law. See *Federal*
8 *Election Commission v. John A. Dramei for Congress Committee*, 640 F. Supp. 985, 987
9 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant
10 acted deliberately and with knowledge that the representation was false." *United States v.*
11 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be
12 drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-215.

13 In this matter, there is information that suggests that Valdez knew that his conduct was
14 prohibited by law. It appears that Valdez knew that an individual donor could contribute no
15 more than \$2,300 to RGPC for the 2007 primary election. Valdez was an authorized fundraiser
16 and host for the RGPC May 1, 2007 event for which he collected 14 contributions, including
17 those by himself and his wife, each in the maximum amount of \$2,300. Moreover, as an
18 authorized fundraiser for RGPC, Valdez was required to sign a statement that he read the
19 campaign finance materials provided by RGPC, which included information that contributions
20 must be made from personal funds. Valdez was also an experienced political contributor, having
21 given \$9,940 to federal candidates and PACs since 2000, all within permissible levels. Based on
22 these facts, it appears that Valdez intended to circumvent the individual contribution limits by
23 using his subordinates to make excessive contributions to RGPC. Accordingly, the Commission

- 1 finds reason to believe that Dr. Jose Valdez knowingly and willfully violated 2 U.S.C. §§ 441f
- 2 and 441a(a).

10044273150